IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 161 of 1997.

Judgement reserved on: 22.10.2007.

Date of decision: 23.10.2007.

State of H.P. & ors. ….. **Appellants.**

Vs.

Ganga Ram …. **Respondent.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellants : **Mr. M.L.Chauhan, Addl. Advocate General.**

For the Respondent : **Ms. Archana Dutt, Advocate.**

Kuldip Singh, Judge.

The State and others are in appeal against the decree of affirmation passed by learned Additional District Judge, Mandi on 12.2.1997 in Civil Appeal No. 72 of 1991.

2. The facts in brief are that respondent filed a suit for declaration with consequential relief of injunction against appellants regarding land comprised in khasra No. 155-420 Plots 2, measuring 1-15-14 bighas situate in Mohal Gawali/ 542, Sub Tehsil Padhar, District Mandi, H.P. on the ground that he has become owner in possession of suit land by way of adverse possession, the appellants are threatening to dispossess him from the suit land. The appellants

---

Whether the reporters of the local papers may be allowed to see the Judgment?

contested the suit and took the pleas of jurisdiction, locus-standi of the respondent to file the suit and non-joinder of necessary parties, the question of validity of notice, under Section 80 CPC, was also raised. The adverse possession of the respondent on the suit land was denied. It was contended that 0-3-8 bighas land out of the suit land is cultivable and remaining khasra No. 420, measuring 1-12-6 bighas, is Ghasani. The trial court decreed the suit on 12.3.1991 and gave the declaration that respondent has become owner of the suit land by way of adverse possession. The appellants filed the appeal against the decision, dated 12.3.1991, which was dismissed by the learned Additional District Judge, Mandi on 12.2.1997, hence this appeal.

3. The appeal was admitted on the following substantial question of law:-

> Whether this (sic) Court has no jurisdiction in view of Section 163 of the H.P. Land Revenue Act.

4. I have heard the learned Additional Advocate General for the appellants and Ms. Archana Dutt, learned counsel for the respondent and have also gone through the record. The learned Additional Advocate General has submitted that the two courts below have erred in decreeing the suit of the respondent. He has submitted that suit is barred under Section 163 of the H.P. Land Revenue Act, 1954 (for short, the Act). He has submitted that civil court has no jurisdiction to give the declaration sought by the respondent by way of a suit. The learned counsel for the respondent has submitted that the suit of the nature, which was filed by the respondent is cognizable by

civil court and the civil court has the jurisdiction to try every suit, under Section 9 of the Code of Civil Procedure, unless its cognizance is expressly or impliedly barred. She has submitted that exclusion of jurisdiction of civil court is not to be readily inferred. There is no bar under Section 163 of the Act to file a suit of the nature, which was filed by the respondent.

5. Section 163 of the Act, is as follows:-

> "*Prevention of encroachment on lands*.- (1) Where Government land or land which has been reserved for the site of a village or for common purposes or uses of the estate right-holders or of the co-sharers therein, has been encroached upon by any person or co-sharers for any purpose including the construction of a building or other structures or by planting trees therein, then—
>
> (a) the revenue Officer may of his own motion or on the report of the patwari of the circle duly verified by the Kanungo of the circle or on the application of any estate right-holder or co-sharer, after giving reasonable opportunity of being heard, shall eject him from such land by order, in the manner prescribed;
>
> (b) if the encroacher has erected any building or other structure or has planted trees on the encroached land, the same shall, in the prescribed manner, vest in the State Government free from all encumbrances;
>
> Provided that if the building or structure and attachment thereto are situated partly in the owned land of the encroacher and partly on the encroached land, the Revenue Officer shall be competent to demolish the portion of the building or structure on the encroached land if the encroacher fails to demolish it himself as ordered by the Revenue Officer; and
>
> (c) the Revenue Officer shall impose upon the encroacher a fine upto Rs. 2000/- per bigha or part thereof, which

shall be recoverable, as if it were an arrear of land revenue.

(2) If a person who has been evicted from any land under section again occupies the land without authority for such occupation, he shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees or with both;

Provided that no court shall take cognizance under this sub-section of an offence unless a report in writing is made by a Revenue Officer not below the rank of Assistant Collector First Grade.

(3) When there is a question as to title or to the adverse possession, wherein the possession is claimed by an encroacher for a period beyond thirty years in relation to the land from which ejectment is made or is to be made under this section, the Revenue Officer, not below the rank of an Assistant Collector of the First Grade, may proceed to determine the question, as if he, were a Civil Court and shall exercise all such powers as are exercisable by a Civil Court.

(4) For the determination of the question under sub-section (3), the Revenue Officer shall follow the same procedure as is applicable to the trial of an original suit by a Civil Court, and he shall record a judgement and decree containing the particulars required by the Code of Civil Procedure, 1908 to be specified therein.

(5) An appeal from the decree of the Revenue Court made under sub-section (4) shall lie to the District Judge as if that decree were a decree of a Subordinate Judge in an original suit.

(6) A further appeal from the appellate decree of a District Judge upon an appeal under sub-section (5), shall lie to the High Court only if the High Court is satisfied that a substantial question of law is involved.

(7) No suit or other legal proceeding shall lie against the Revenue Officer or any person acting under this section in respect of anything in good faith done or purported to have been done under the provisions thereof or the rules made thereunder.

Explanation.- For the purposes of this section, any person who holds land a lease granted by the Government for a fixed term and continues to be in possession of the land beyond the expiry of the period of lease shall be deemed to be an encroacher unless such person gets the lease extended or renewed."

The perusal of Section 163 of the Act would show that there is no express or implied bar to exclude the jurisdiction of the civil court to try a suit seeking declaration that respondent has become owner of the suit land by way of adverse possession. As per Section 9 of the Code of Civil Procedure, courts may try all civil suits unless barred. The learned Additional Advocate General has failed to point out under which part of Section 163 of the Act, the suit filed by the respondent is barred. The Apex Court in **Dhulabhai etc.** vs. **State of Madhya Pradesh and another [AIR 1969 SC 78]** has held that exclusion of civil courts jurisdiction is not to be readily inferred. There is nothing on record to show that when the respondent filed the suit, any proceedings, under Section 163 of the Act, were pending or concluded against the respondent regarding the suit land. In view of

Dhulabhai's case (supra), it can be safely held that civil court has the jurisdiction to try the suit, which was filed by the respondent. The two courts below have concurrently held that respondent has become owner of the suit land by way of adverse possession, which is a finding of fact. The learned Additional District Judge has also gone into the question of civil court jurisdiction to try the suit. No case has been made out for interference. Accordingly, the substantial question of law referred above is decided against the appellants and in favour of the respondent.

6. No other point was urged.

7. The result of the above discussion, the appeal fails and is accordingly dismissed. No costs.

October 23 ,2007. **(Kuldip Singh)**
(*Hem*) **Judge.**